

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BARBARA JOHNSON,

No C 07-04036 VRW

Plaintiff,

v

NORTHWEST AIRLINES, INC,

Defendant.

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BARBARA JOHNSON,

No C 07-04044 VRW

Plaintiff,

v

NORTHWEST AIRLINES, INC,

Defendant.

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BARBARA JOHNSON,

No C 07-04045 VRW

Plaintiff,

ORDER

v

NORTHWEST AIRLINES, INC,

Defendant.

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1 Plaintiff Barbara Johnson filed two actions in state  
2 court, both of which make the same allegation: Northwest Airlines,  
3 Inc failed to provide Johnson with a wheelchair when she was  
4 changing planes on July 9, 2005, forcing Johnson to negotiate a  
5 substantial distance between flights, thereby causing her to fall.

6 Johnson filed one action in Alameda superior court and  
7 the other in San Francisco superior court. Doc #7 in 07-4036.  
8 Northwest removed the Alameda case and the San Francisco case to  
9 the San Francisco Division of this court on August 6, 2007 and  
10 August 7, 2007 respectively. Northwest also removed the Alameda  
11 case to the Oakland Division of this court on August 7, 2007. Id.  
12 All this resulted in the above three separate actions by the same  
13 plaintiff alleging the same wrong against the same defendant.

14 On August 20, 2007 this court found that the three  
15 removed cases were related, and all three were assigned to the  
16 undersigned chief judge. Doc #11 in 07-4036. For reasons that  
17 follow and putting aside any issue associated with the litigation  
18 mitosis going on here, the court finds that the actions were  
19 improperly removed and remands them.

20 An action may be removed to federal court if it could  
21 have been brought there originally. 28 USC § 1441. The Ninth  
22 Circuit has made clear, however, that section 1441 is to be  
23 construed strictly against removal jurisdiction. Libhart v Santa  
24 Monica Dairy Co, 592 F2d 1062, 1064 (9th Cir 1979).

25 In order to establish diversity jurisdiction, defendant  
26 must demonstrate that: (1) all plaintiffs are of different  
27 citizenship from all defendants and (2) the amount in controversy,  
28 exclusive of interest and costs, exceeds the current jurisdictional

1 minimum of \$75,000. See 28 USC § 1332(a); see also Singer v State  
2 Farm Mut Auto Ins Co, 116 F3d 373, 376 (9th Cir 1997).

3 With respect to the second element, "[t]he district court  
4 may consider whether it is 'facially apparent' from the complaint  
5 that the jurisdictional amount is in controversy. If not, the  
6 court may consider facts in the removal petition, and may 'require  
7 parties to submit summary-judgment-type evidence relevant to the  
8 amount in controversy at the time of removal.'" Singer 116 F3d at  
9 377 (quoting Allen v R & H Oil & Gas Co, 63 F3d 1326 (5th Cir  
10 1995)). Removal, however, cannot be based simply upon conclusory  
11 allegations. Gaus v Miles, Inc, 980 F2d 564, 567 (9th Cir 1992).  
12 "The removal notice must be based on reasonable inquiry into the  
13 jurisdictional facts asserted. It is immaterial that the attorney  
14 signing the removal notice *subjectively* (in 'good faith') believed  
15 the facts alleged were correct if they had no *objectively*  
16 *reasonably basis* for such belief." William W Schwarzer, A Wallace  
17 Tashima, James M Wagstaffe, Federal Civil Procedure Before Trial,  
18 § 2:1114 (Rutter Group, 2007) (emphasis in original) (citing  
19 Rockwell Int'l Credit Corp v United States Aircraft Ins Group 823  
20 F2d 302, 304-05 (9th Cir 1987) (overruled on other grounds by  
21 Partington v Gedan, 923 F2d 686 (9th Cir 1991)).

22 Here, the complaint does not demand a dollar amount.  
23 Accordingly, the court looks to the facts alleged in the removal  
24 petition. Defendant's notice of removal states: "Plaintiff has  
25 represented to Northwest that plaintiff suffered injuries to her  
26 hip, right wrist and back in the incident alleged in the complaint,  
27 and that the amount in controversy in this case is at least  
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1 \$145,000." Doc #1 in 07-4036. This statement is insufficient to  
2 establish jurisdiction. A defendant cannot rely on a plaintiff's  
3 unsworn statement that damages exceed \$75,000. See Gaus v Miles,  
4 Inc, 980 F2d 564 (9th Cir 1992); see also Navarro v Subaru of  
5 America Operations Corp, 802 F Supp 191, 194 (ND Il 1992)  
6 (defendant cannot rely solely on plaintiff's settlement demand);  
7 Garza v Bettcher Industries, Inc, 752 F Supp 753, 763 (ED Mich  
8 1990) (holding that defendant's bald recitation that "the amount in  
9 controversy exceeds \$50,000," without the defendant identifying any  
10 specific factual allegations or provisions in the complaint which  
11 might support that proposition, should provoke *sua sponte* remand).  
12 Here, defendant's notice neither overcomes the "strong presumption"  
13 against removal jurisdiction, nor satisfies defendant's burden of  
14 setting forth, in the removal notice itself, the underlying facts  
15 supporting its assertion that the amount in controversy exceeds  
16 \$75,000.

17 Seeking removal, defendant had the burden of establishing  
18 the amount in controversy. As the burden has not been met, federal  
19 jurisdiction does not exist. Accordingly, the court will REMAND  
20 the cases to state court for further proceedings. See Albingia  
21 Versicherungs A G v Schenker Intern Inc, 344 F3d 931, 938 (9th Cir  
22 2003), amended by 350 F3d 916 (9th Cir 2003) ("if it is discovered  
23 at any time in the litigation that there is no federal  
24 jurisdiction, a removed case must be remanded to the state court  
25 court rather than dismissed.") The clerk shall forthwith transmit

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1 the files in 07-04036-VRW and 07-04044-VRW to the Alameda superior  
2 court and 07-04045-VRW to the San Francisco superior court.

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4 IT IS SO ORDERED.



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6 VAUGHN R WALKER

7 United States District Chief Judge  
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